

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

MATTHEW L. STASZAK

PLAINTIFF

v.

Case No. 2:16-cv-168 KGB-JJV

UNITED STATES OF AMERICA, et al.

DEFENDANTS

ORDER

Before the Court are the Proposed Findings and Recommendations submitted by United States Magistrate Judge Joe J. Volpe on December 14, 2016 (Dkt. No. 3). Judge Volpe recommended that this Court dismiss without prejudice plaintiff Matthew L. Staszak's complaint for failure to state a claim upon which relief may be granted (*Id.*).

On December 23, 2016, this Court granted Mr. Staszak's motion for extension of time to file objections to the Proposed Findings and Recommendations (Dkt. Nos. 4, 5). This Order permitted Mr. Staszak to file any objections to the Proposed Findings and Recommendations up to and including January 13, 2017 (Dkt. No. 5). Mr. Staszak did not file any such objections prior to January 13, 2017.

In its subsequent Order of June 30, 2017, this Court construed Mr. Staszak's subsequent motion to stay as a successive motion for extension of time to file objections to the Proposed Findings and Recommendations (Dkt. No. 15). The Court granted Mr. Staszak an additional 30 days from entry of the Order to file any objection to the Proposed Findings and Recommendations, permitting Mr. Staszak to file any such objection up to and including July 30, 2017 (*Id.*). Mr. Staszak did not file any such objections, and the time to file an objection has passed. Instead, Mr. Staszak filed what is styled as a motion for leave to supplement and amend his complaint, wherein Mr. Staszak requests to join an additional defendant to his original complaint (Dkt. No. 20).

The Court declines to construe this filing as a timely objection to Judge Volpe's Proposed Findings and Recommendations. Mr. Staszak has had ample time to file an objection to address the substance of Judge Volpe's Proposed Findings and Recommendations. Mr. Staszak's latest motion does not do so. In making this determination, the Court has reviewed the record *de novo*, considering all of Mr. Staszak's filings, including but not limited to his exhibit and motion to amend complaint, his first motion for leave to supplement and amend his complaint pursuant to Fed. R. Civ. P. 15(D), and his second motion for leave to supplement and amend his complaint pursuant to Fed. R. Civ. P. 15(D) (Dkt. Nos. 12; 14; 20). Mr. Staszak's proposed amendments do not cure the deficiencies Judge Volpe identified in his Proposed Findings and Recommendations. Specifically in regard to placement in the Special Housing Unit ("SHU"), Mr. Staszak admits this placement was pursuant to protocol and while the alleged incident was investigated (Dkt. No. 14, at 2-3). He does not indicate how long he was in the SHU nor does he explain the outcome of the investigation. Although he describes language which is troubling, he claims to have received information regarding that language from an unnamed inmate, does not identify the individual defendant to whom that language was attributed, and does not identify when those alleged statements were made. For these reasons, among others, after careful review, the Court concludes that the Proposed Findings and Recommendations should be, and hereby are, approved and adopted as this Court's findings in all respects (Dkt. No. 3).

Thus, the Court dismisses without prejudice Mr. Staszak's complaint for failure to state a claim upon which relief may be granted (Dkt. No. 1). 28 U.S.C. §1915A(b). The Court determines that dismissal of this action counts as a "strike" for purposes of 28 U.S.C. § 1915(g). Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this

Order would not be taken in good faith. The Court will separately enter Judgment consistent with this Order.

Also pending before the Court are a series of motions filed by Mr. Staszak, including his motion to withdraw document, motion for preliminary injunction, the first motion to amend complaint, the second motion to amend complaint, and the third motion to amend complaint (Dkt. Nos. 9, 11, 12, 14, 20). Because the Court has adopted the Proposed Findings and Recommendations to dismiss without prejudice the action (Dkt. No. 3), the Court denies all pending motions as moot (Dkt. Nos. 9, 11, 12, 14, 20).

It is so ordered this the 22nd day of August, 2017.

A handwritten signature in black ink, reading "Kristine G. Baker". The signature is written in a cursive style with a horizontal line underneath the name.

Kristine G. Baker
United States District Judge